Company and is retained by it, or has been converted by it to its own use, with interest from the date of demand if you should find that a demand has been made, if not, from the commencement of this suit. For although the plaintiff may have knowingly violated the rules of the defendant in the manner of transmitting this money, still that does not divest the plaintiff of his property in the money, nor authorize the defendant, either by itself or its agent, to confiscate it. The defendant is bound to pay it over on demand with interest from the date of demand.

Supreme Court of Pennsylvania.

SCHUYLKILL COUNTY *v.* PETER COPLEY.

Where a bond is signed by an illiterate person upon misrepresentations as to its contents it is not his deed, but is void *ab initio*. In such case it is not material whether the obligee had knowledge of the misrepresentation or not. But where the contents are correctly stated, but the obligor is induced to sign it by misrepresentations of facts, it is his bond, though he may avoid it for the fraud.

It is not the nature of the punishment but of the offence which determines its infamous character so as to disqualify a witness convicted of it, and embezzlement is not in Pennsylvania such a crime.

ERROR to the Court of Common Pleas of Schuylkill county.

This was a feigned issue to try the question whether a certain bond, on which judgment had been entered under a warrant of attorney, was the deed of Peter Copley, as one of the sureties of Thomas Fogarty, a collector of taxes. It was proved on the trial that Fogarty obtained the signature of Copley, who was an illiterate man, by representing to him that the paper was a petition to the county commissioners for his appointment as tax-collector.

The opinion of the court was delivered by

AGNEW, J.—The county contended that the deception mattered not, unless it be shown that the county had a knowledge of the fraud before accepting the bond. The court below held that the misrepresentation of the contents of the paper avoided it as a bond. The issue, therefore, was the same as if, to a declaration on the bond, *non est factum* had been pleaded. The instruction of the court was right and follows the distinction stated in *Green* v. *North Buffalo Tp.*, 6 P. F. Smith 114, between a defence

resting upon facts which are misstated in order to induce a party to enter into a bond, the contents of which he knows; and one resting on a misrepresentation of the *contents* of the instrument itself, to an *illiterate* person. In the former it was said the bond is the obligation of the party who seals it, but is avoided by the false inducement to enter into it; in the latter it is *not his deed* or bond at all. No authority was cited for this elementary principle, and it is argued that the second proposition is unsound. But it was the first resolution in *Thoroughgood's Case*, in the time of Lord COKE, 2 Reports 9 b, in these words: "First, that although the party to whom the writing is made, or other by his procurement, doth not read the writing; but a stranger of his own head read it in other words than it in truth is; yet it shall not bind the party who delivereth it; for it is not material who readeth the writing, so as he who maketh it be a layman, and being not lettered, be (without any covin in himself) deceived, and that is proved by the usual form of pleading in such a case, that is to say, that he was a layman and not learned and that the deed was read to him in other words, &c., generally, without showing by whom it was read." The second resolution in *Thoroughgood's Case* was that an illiterate man need not execute a deed before it is read to him in a language he understands; but if he do, without desiring it to be read, the deed is binding. And see 2 Blackst. Com. *304–308. And says Mr. Chitty, in his Pleadings, vol. 1, *483. The defendant may give evidence under the plea of *non est factum* that the deed was *void* at common law *ab initio; or that it was obtained by fraud;* or whilst the party was drunk, a married *woman*, or a lunatic; or that it became void after it was made and before the commencement of the action, by erasure, alteration, addition, &c. See also 1 Saunders on Pl. & Ev. *407. The very point in this case was decided in *Stover* v. *Weir*, 10 S. & R. 25. That was an action on a single bill to which a defence was set up that the writing had been obtained by falsely reading it as a receipt, and requesting the defendant to sign it as a witness. The plea setting forth the facts specially was treated as a special *non est factum*. See also *Bauer* v. *Roth*, 4 Rawle 93, 94, per KENNEDY, J. These authorities show that the learned judge committed no error in his charge.

But we think the court erred in the rejection of Thomas

Fogarty as a witness on the ground of *infamy*. Fogarty had been convicted and sentenced for embezzlement of the county's money, as a tax-collector, under the 65th section of the Act of 31st March 1860, Brightly's Dig. 229, pl. 73; and was in prison under his sentence. The punishment of the offence of embezzlement under this section is imprisonment by separate or solitary confinement at labor not exceeding five years, and a fine equal to the amount of the money embezzled. The punishment is the same in kind as that inflicted for infamous offences in Pennsylvania; but it is now settled that it is not the nature of the punishment, but of the offence, which determines its infamous character: 2 Russell on Crimes 974; 1 Greenleaf Ev. § 372, in note 3; 3 Casey 465. Infamous crimes are treason, felony, and every species of the *crimen falsi*, such as forgery, perjury, subornation of perjury, and offences affecting the public administration of justice; such as bribing a witness to absent himself and not to give evidence, and conspiracies to obstruct the administration of justice, or falsely to accuse one of an indictable crime: 2 Russell on Crimes 973; 1 Greenleaf's Ev. § 373. This is clearly the limitation of the infamous crimes as understood in this state; as may be seen in the following cases: *Commonwealth* v. *Shaver*, 3 W. & S. 342–3; *Bickel's Exr.* v. *Fasig's Admr.*, 9 Casey 464–5. And see argument of counsel in *Commonwealth for use* v. *Ohio & Pennsylvania R. R. Company*, 1 Grant 331, 2, 3, 4. There are many offences, involving both falsehood and fraud, which are punished as infamous crimes are usually punished in this state, and yet are not infamous crimes, and will not exclude the offenders as witnesses: *Commonwealth* v. *Shaver*, and *Commonwealth* v. *Ohio & Pennsylvania R. R. Co.*, supra, 1 Greenleaf's Ev. § 373. In Massachusetts it is held that the offences of receiving stolen goods knowingly, and cheating by false pretences, will not render the offenders infamous: *Commonwealth* v. *Rogers*, 7 Metcalf 500; *Utley* v. *Menich*, 11 Metcalf 302; and see 1 Whart. C. L. § 761. As remarked by WOODWARD, J., in *Bickel's Exr.* v. *Fasig's Admr.*, 9 Casey 465, the tendency of the judicial mind is against objections to competency. Such also is the direction of legislation, to be seen in § 181 of the Act of 31st March 1860, Brightly's Dig. 247, pl. 190, which gives to a convict who endures his punishment, for a felony or any misdemeanor punishable with imprisonment at labor, the advantage of a full pardon, except as to wilful

and corrupt perjury. Fulfilling his sentence, therefore, restores the offender to competency as a witness. The Act of 15th April 1869, declaring that no interest or policy of law shall exclude a party or person from being a witness in any civil proceeding, runs in the same direction. In all these cases the objection goes to the credibility of the witness rather than to his competency. For the error in rejecting the witness, the judgment is reversed and a *venire de novo* awarded.

United States Circuit Court. Districts of Missouri.

STATE NATIONAL BANK *v.* FREEDMEN'S SAVINGS AND TRUST COMPANY.

A certificate of deposit payable to the order of depositor on the return of the certificate was issued by Bank A. to T. D., who could not write. The bank took his mark on its signature book, and wrote a description of him opposite. Shortly afterwards the certificate was stolen from T. D. and presented to Bank B. by a stranger who gave his name as T. D. and said he could not write. Thereupon the cashier of Bank B. endorsed the certificate to his own order with the name of T. D. to which the stranger made his mark, and an employee of Bank B. added his signature as "witness to mark." The cashier then endorsed the certificate and sent it through a correspondent to Bank A., which thereupon paid it, and the money was handed over to the stranger. Thereafter the real T. D. appeared at Bank A., and on discovery of the forgery Bank A. paid him the amount and brought suit against Bank B. to recover the payment on the forged endorsement. *Held*, that Bank A. had a right to rely on the identification of T. D. by Bank B. and could recover.

ON the 7th day of November 1870, Tim Dunivan deposited in the State National Bank at Keokuk, Iowa, nine hundred dollars, and received therefor a certificate of deposit, of which the following is a copy:—

"$900 State National Bank, Keokuk, Nov. 7, 1870.

Tim Dunivan has deposited in this Bank Nine Hundred Dollars current funds, payable to the order of himself hereon in like funds on the return of this certificate.

In currency $900. [No. 4991.]

G. W. HORTON,
for Teller."

Tim Dunivan was unable to write, and therefore placed upon the signature book of the bank his mark, the officers of the bank